DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0300
Indiana Individual Income Tax
For the Tax Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Imposition of the State's Individual Income Tax By Reference to Taxpayer's Federal Adjusted Gross Income.

Authority: IC 6-3-1-3.5; United States v. Kimball, 896 F.2d 1218 (9th Cir. 1990); United States v. Moore, 627 F.2d 839 (7th Cir. 1980); United States v. Long, 618 F.2d 74 (9th Cir. 1980); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1.

Taxpayer maintains that because he reported "0" income on his Federal income tax return for year 2000, he was compelled to put "0" on his state return for that same year.

II. Definition of "Income" for Purposes of Imposing the State's Individual Income Tax.

Authority. U.S. Const. amend. XVI; Ind. Const. art X, § 8; IC 6-3-1-3.5 et seq.; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; I.R.C. § 61; I.R.C. § 62; New York v. Graves, 300 U.S. 308 (1937); Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921); Eisner v. Macomber, 252 U.S. 189 (1920); Doyle v. Mitchell, 247 U.S. 179 (1918); Stratton's Independence v. Hobert, 231 U.S. 399 (1913); United States v. Connor, 898 F.2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F.2d 1328 (7th Cir. 1984); United States v. Romero, 640 F.2d 1014 (9th Cir. 1981); United States v. Ballard, 535 F.2d 400 (8th Cir. 1976); Conner v. United States, 303 F.Supp. 1187 (S.D. Tex. 1969); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer maintains that the term "income" is not defined in the Internal Revenue Code. According to taxpayer, under the law and Supreme Court precedent, only corporations are competent to receive taxable income and that the normal income – such as wages and retirement benefits – received by ordinary citizens is not subject to Federal or state income tax.

STATEMENT OF FACTS

Taxpayer filed an Indiana individual income tax return for 2000. On that return, the taxpayer reported that his Federal adjusted gross income was "0." Taxpayer attached a letter to the Indiana return stating he had decided that he would no longer volunteer to pay the state's individual income tax because, he had received no "income" during 2000. The Indiana Department of Revenue (Department) chose to disagree with taxpayer and – given every indication that taxpayer had received income in the form of retirement benefits during the year – sent the taxpayer a notice of "Proposed Assessment." Taxpayer submitted a protest of the Proposed Assessment, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Imposition of the State's Individual Income Tax By Reference to Taxpayer's Federal Adjusted Gross Income.

Taxpayer presents numerous arguments in support of his assertion that he is not liable for Indiana income tax. His first argument is based on the undisputed fact that he reported "0" income on his corresponding Federal return. According to taxpayer, he was thereafter – under penalty of law – obliged to report that same amount on his state return. In support of his argument, taxpayer presented a copy of his 2000 Federal return and, indeed, it is apparent that taxpayer had reported "0" on the Federal return. Taxpayer has also submitted a copy of the check which the Federal government obligingly issued to taxpayer and which refunded the total amount of federal taxes previously withheld.

It is also not disputed that the Indiana tax return for the tax year 2000 employs Federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the IT-40 state form requires the taxpayer to "Enter your Federal adjusted gross income from your Federal return (see page 9)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the statute specifies addbacks and deductions, peculiar to Indiana, which modify the Federal adjusted gross income amount. The Department's regulation concisely restates the same formulary principal. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> > (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
> > (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
> > (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require that an Indiana taxpayer employ the Federal adjusted gross income calculation, as determined under I.R.C. § 62, as the starting point for determining the taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to declare "0" as Indiana adjusted gross income because he declared "0" on his Federal return – is totally meritless. The statute is unambiguous. Indiana adjusted gross income begins with Federal taxable income as defined by I.R.C. § 62, not as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form. The form does not purport to state what Indiana tax law is or is not; the directions themselves are not the means for determining the taxpayer's adjusted gross income. The Indiana tax form simply instructs a taxpayer to put which number inside of which box. Those directions notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his Indiana adjusted gross income tax liability.

Taxpayer has cited to a number of cases in support of the proposition that he is in full compliance with the tax laws simply by placing a "0" on his tax return. For example taxpayer cites to United States v. Kimball, 896 F.2d 1218 (9th Cir. 1990); United States v. Moore, 627 F.2d 839 (7th Cir. 1980); United States v. Long, 618 F.2d 74 (9th Cir. 1980). However, none of these cases support the fanciful notion that a taxpayer has fulfilled his obligations by merely placing a "0" on the form. Rather, in each of the cited cases, the defendant was being criminally prosecuted for failing to file an income tax return. *See* 26 U.S.C.S. § 7203. In each of those cases, the court merely found that "A return containing false of misleading figures is still a return." Long, 618 F.2d at 76. The cases cited by the taxpayer are entirely irrelevant to taxpayer's basic argument that he does not have to pay income tax. Taxpayer is not being criminally prosecuted for failure to file a return, because it is clear that taxpayer *did* file an Indiana tax return for 2000. Rather, the issue is whether the taxpayer owes adjusted gross income tax for that year.

FINDING

Taxpayer's protest is denied.

II. Definition of "Income" for Purposes of Imposing the State's Individual Income Tax.

Taxpayer argues that he did not receive "income" during the year 2000. Liberally construed, taxpayer's argument is that – for purposes of determining income tax liability – "income" can only be derivative of corporate activity. Therefore, as an individual Indiana resident who by definition did not receive "corporate" income, taxpayer is not subject to the adjusted gross income tax because the ordinary income received by individuals is not "taxable income."

Taxpayer has provided a number of Supreme Court cases which purportedly support taxpayer's basic contention. Taxpayer cites to Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921) for the proposition that income tax can only be levied against corporate gains. In that case, the Court held that the when a provision in a will created a trust, the increase of the value of the trust resulted in taxable "income" under the provisions of the U.S. Const. amend. XVI. Id. In arriving at that decision, the Court stated that "the word [income] must be given the same meaning and content in the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of [the] court." Id. 519.

Taxpayer also cites to Eisner v. Macomber, 252 U.S. 189 (1920), a case in which the Court addressed the issue of whether the U.S. Const. amend. XVI permitted the government to tax a taxpayer's stock dividends resulting from a corporation's accumulated profits. The Court held that the stock dividend did not involve the realization of a taxable gain but that the corporation's accumulated profits were simply capitalized or retained as surplus. Id. at 211. In effect, the taxpayer in Eisner had not yet realized a gain severed from and independent of the corporations' assets. Id. at 211-12. In reaching that decision, the Court stated that income is the "gain derived from capital, from labor, or from both combined." Id. at 201.

Taxpayer reads Merchant's Loan and Eisner together with certain other cases – Doyle v. Mitchell, 247 U.S. 179 (1918); Stratton's Independence v. Hobert, 231 U.S. 406 (1913) United States v. Ballard, 535 F.2d 400 (8th Cir. 1976) – as supporting his contention that the individual income tax can only be assessed against corporate gain. Taxpayer predicates this conclusion on selected case citations which, when taken together, purportedly limits the definition of "taxable income" to the definition originally established under the Civil War Income Tax Act of 1867. However, setting aside the question of the validity of taxpayer's legal analysis, taxpayer's conclusion concerning the definition of corporate income tax is totally irrelevant.

Taxpayer's legal analysis stands for nothing more than, when read in isolation and selectively divorced from the factual setting under which the decisions were reached, a legal argument can be proposed which will support any legal conclusion no matter how unjustified that conclusion is ultimately found. Taxpayer cites cases in which the Court

was asked to determine what constituted *corporate income* under the corporate income and excise taxes in effect at the time the Court reached its conclusion. To apply Supreme Court decisions limited to determining the efficacy and application of corporate income taxes to issues related to individual income tax may yield a certain desired result but the entire process is not legally, intellectually, or logically sound.

Taxpayer cites to numerous other cases each of which will not be addressed here. It is sufficient to say that the cases simply do not get the taxpayer where he wants to go. For example, taxpayer cites to Conner v. United States, 303 F. Supp. 1187 (S.D. Tex. 1969) in which the court held that the plaintiff taxpayers' receipt of fire insurance proceeds did not constitute taxable income. Id. at 1191. Nowhere in that case or in any of the other cited cases, did the court find that individuals were not responsible for reporting their income and paying tax on that income.

The United States Supreme has clearly stated that the wages of individual citizens may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308 (1937), Justice Stone stated "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." Id. at 312.

Since that 1937 decision, the Federal courts have consistently, repeatedly, and without exception, determined that individual wages are income. United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable") (Emphasis in original); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical issue, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and Federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

As set out in the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such

exemptions as may be prescribed by law." Ind. Const. art X, § 8. The Indiana General Assembly exercised its constitutional prerogative by imposing an adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq. In doing so, the General Assembly defined an individual subject to the adjusted gross income tax as a "natural born person, whether married or unmarried, adult or minor." IC 6-3-1-9.

Taxpayer further argues that nowhere in the Internal Revenue Code is there a definition of "income." Taxpayer errs. I.R.C. § 61(a) states as follows:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
> (2) Gross income derived from business;
> (3) Gains derived from dealings in property;
> (4) Interest;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Alimony and separate maintenance payments;
> (9) Annuities;
> (10) Income from life insurance and endowment contracts;
> (11) *Pensions . . . .* (*Emphasis added*).

Under I.R.C. § 62, taxpayer begins calculating his adjusted gross income by starting with "gross income" as defined under I.R.C. § 61. Taxpayer received pension payments during 2000. Therefore, taxpayer must include those pension payments as part of his reported "gross income." Taxpayer is then entitled to takes whatever adjustments and deductions are available to him in determining the amount of adjusted gross income. Thereafter, the taxpayer is required to report the Federal adjusted gross income on his Indiana return and begin the process of calculating his Indiana tax liability.

Taxpayer is of the opinion that, with the just the right alchemistic combination of semantic technicalities, he can render himself immune from Federal and state tax liability. There is not one single Federal or state court case which supports such a notion. Wishful thinking aside, given that taxpayer received gross income (I.R.C. § 61) in 2000, is an "individual" under IC 6-3-1-9, was a resident of Indiana for the year 2000 (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's pension payments.

FINDING

Taxpayer's protest is denied.

DK/JM/MR - 020808